REMARKS

Claims 1-35 are pending. A Notice of Appeal was filed January 24, 2005. Claims 1, 2, 5, 8-12, and 24-27 have been rejected under 35 U.S.C. §103(a) in light of U.S. Patent No. 5,410,016 (Hubbell et al.). Claims 2-4, 6-8, 12-20, 23, 26, and 28-25 have been rejected in light of Hubbell et al. and Rhee et al. (U.S. Patent No. 5,874,500). Claims 21-23 have been rejected under 35 U.S.C. §103(a) in light of Hubbell et al. and Hsu et al. (U.S. Patent No. 5,192,743). This Reply requests the withdrawal of rejections based upon Hubbell et al. and allowance of the pending claims.

An affidavit is submitted herewith, under 37 C.F.R. §1.132. The Affidavit includes the Food and Drug Administration Premarket approval for FOCAL SEAL (the PMA).

A new amendment, new affidavit, or other new evidence in an application on appeal may be admitted upon showing why such information was not previously provided. 37 C.F.R. §1.116 In the present case, the Examiner suggested an affidavit be filed during an interview on the date of February 9, 2005, wherein claim 1 was discussed in light of the fate of photoinitiators during the processes of 5,410,016 (Hubbell et al.). The Examiner maintained that the photoinitiators of Hubbell et al. were catalysts that, by definition, were not consumed during polymerization. During the interview, the Applicant indicated that Hubbell et al. taught that dyes used for photoinitiation would be bleached during that process. The Examiner suggested at that time that an affidavit to that effect would be considered. Accordingly, an affidavit is hereby submitted and its consideration is requested. The PMA included with the affidavit was uncovered after the interview. Since the Examiner requested the affidavit, its consideration by the Patent Office is believed to be appropriate at this time.

Dr. Sawhney, in the Affidavit, states that a person of ordinary skill in these arts would understand that the dyes used as photoinitiators in the photoinitiation process of the Hubbell et al. would be bleached during that process, and points to the article authored by Gruber in Prog.

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